

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

OLD INDIAN TRICKS, LLC

CIVIL ACTION NO.:

VERSUS

DISTRICT JUDGE

BRIAN SPARKS, *et al*

MAGISTRATE JUDGE

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

NOW COME Defendants, Brian Sparks and Nelson Creek Outdoors, LLC, through undersigned counsel, and pursuant to 28 U.S.C. §§ 1441 and 1446, file this Notice of Removal of the captioned action now pending in the 35th Judicial District Court for the Parish of Grant, State of Louisiana, Docket No. 27458. In support of its Notice of Removal, Defendants respectfully represent:

COMMENCEMENT AND NATURE OF ACTION

1.

On or about December 29, 2022, Plaintiff, Old Indian Tricks, L.L.C., initiated a legal action in the Thirty-Fifth Judicial District Court for the Parish of Grant by filing a Petition for Damages styled "*Old Indian Tricks, LLC vs. Brian Sparks, et al,*" bearing docket number 27458, which state court is within the jurisdiction of the Western District of Louisiana. Brian Sparks, Nelson Creek Outdoors, L.L.C., Travis Lane White, Jr., and Ty Book were

named as defendants. A copy of Plaintiff's Petition is attached hereto as Exhibit A and incorporated herein by reference.

2.

In the Petition, Plaintiff asserted claims based upon alleged violations of the Louisiana Unfair Trade Practices and Consumer protection law and trademark infringement. Plaintiff alleged that Sparks and Nelson Creek misappropriated Plaintiff's mark and made false statements concerning Plaintiff's products asserting that "both of which constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce." Plaintiff further alleged that "Old Indian Tricks seeks monetary relief over \$50,000.00 and injunctive relief to enforce its rights and prohibit future losses." Exhibit A, ¶ 10. Nothing in the Petition indicated that the amount in controversy was in excess (or was not in excess) of \$75,000.

3.

Brian Sparks was served with the Citation and Petition for Damages *via* the Louisiana Long Arm Statute on January 8, 2022. *See* Exhibit B. Nelson Creek Outdoors was served *via* the Long Arm Statute on January 8, 2022. As of the filing of this Notice of Removal, neither Travis Lane White, Jr., nor Ty Brooks have been served. Accordingly, this Notice of Removal is timely.

PARTIES AND DIVERSITY OF CITIZENSHIP

4.

According to the allegations of the Petition, plaintiff, Old Indian Tricks, LLC, is a Louisiana limited liability company domiciled in Grant Parish, Louisiana. Furthermore, based upon the allegations in the Petition, Old Indian Tricks, LLC, was a domiciliary of Louisiana at the time its Petition was filed in the Thirty-Fifth Judicial District Court for the Parish of Grant, Louisiana, on December 29, 2021.

5.

Defendant Nelson Creek Outdoors, LLC is a Wisconsin Limited Liability Company with its sole member domiciled in the State of Wisconsin. Accordingly, Nelson Creek Outdoors, LLC, is a domiciliary of the State of Wisconsin for the purposes of diversity of citizenship jurisdiction.

6.

Defendant Brian Sparks is a resident and domiciliary in the State of Wisconsin. Accordingly, Brian Sparks is a domiciliary of the State of Wisconsin for the purposes of diversity of citizenship jurisdiction.

7.

Defendants, Travis Lane White, Jr. and Ty Book, have not been served and, thus, their citizenship is not considered for determining diversity of citizenship jurisdiction.

8.

In any event, even if Travis Lane White, Jr. and Ty Book had been served, their respective domiciles should be disregarded for the purpose of determining whether this Court has original jurisdiction under 28 U.S.C. § 1332, because White and Book are improperly joined for the purpose of defeating diversity.

9.

Complete diversity of citizenship exists between Plaintiff, Old Indian Tricks, LLC, and the only defendants whose citizenship is relevant — Brian Sparks and Nelson Creek Outdoors, LLC — as is required for original jurisdiction to vest in the United States District Court for the Western District of Louisiana, pursuant to 28 U.S.C. § 1332.

AMOUNT IN CONTROVERSY

10.

Removal of an action from state to federal court on the basis of diversity is proper if the district court finds, by a preponderance of the evidence, that the amount in controversy exceeds \$75,000.

11.

Louisiana prohibits by statute pleading specific monetary amounts of damages in the context of most civil actions. In paragraph 10 of the Petition, Plaintiff alleges that it “seeks monetary relief over \$50,000.00 and injunctive relief.”

12.

Plaintiff further alleges that in the market of game attractant products “brand recognition, and hunting success associated with that recognition, is of significant value in competition” and that an injunction is necessary to prevent Nelson Creek and Sparks from “attempting to misappropriate the goodwill in Plaintiff’s Mark.” Petition, at ¶¶ 12 and 22. Plaintiff also seeks attorney fees pursuant to Louisiana Revised Statutes § 51:1409.

13.

The measure of the value of an injunction for amount-in-controversy is evaluated using the value-to-plaintiff rule. *See Ragan Family Trust v. Kansas City Southern Ry. Co.*, 2012 WL 2376073 (W.D. La. June 1, 2012) and *Premier Indus. Corp. v. Texas Indus. Fastener Co.*, 450 F.2d 444 (5th Cir. 1971).

14.

Plaintiff has alleged that the value of the trademark “Cuzz’s Cooter Juice” is of substantial value in the game attractants market. Petition, at ¶¶ 12-13. Plaintiff further alleges that it and its business will suffer “imminent and irreparable harm” if Nelson Creek and Sparks are not enjoined from “seeking to profit from its goodwill, and making false claims about the product offered in connection with it.” Petition, at ¶¶ 42-43.

15.

Upon information and belief, the value of the injunction, attorney fees, and monetary relief asserted by Plaintiff is in excess of the \$75,000.00 jurisdictional requirement.

REMOVAL PROCEDURES

16.

Because complete diversity exists between Plaintiff and the only defendants whose citizenship is relevant herein, Brian Sparks and Nelson Creek Outdoors, LLC, and because the amount in controversy exceeds the jurisdictional amount required by 28 U.S.C. § 1332, the United States District Court for the Western District of Louisiana is vested with original jurisdiction over this action pursuant to 28 U.S.C. § 1442, *et seq.*

17.

Pursuant to 28 U.S.C. § 1441 and Local Rule 77.3, removal is proper to the United States District Court for the Western District of Louisiana, Alexandria Division as the district court of the United States for the district and division embracing the place where this action is pending: the 35th Judicial District Court for the Parish of Grant, State of Louisiana.

18.

The undersigned represents both Brian Sparks and Nelson Creek Outdoors, LLC in the above captioned matter and both consent to removal of this action to the United States District Court for the Western District of Louisiana, Alexandria Division.

19.

This Notice of Removal is filed within thirty days of the date of service of the Citation and Petition for Damages. *See* 28 U.S.C. § 1446(b)(3) and (c)(3)(A).

20.

A copy of this Notice of Removal is being served upon all counsel of record, and Defendant will file a copy of this Notice with the Clerk of Court for the Thirty-Fifth Judicial District for the Parish of Grant, State of Louisiana. A copy of the State Court Written Notice of Removal is attached hereto and made a part hereof as Exhibit D.

21.

A copy of the entire state court record is being requested and will be filed with this Court pursuant to 28 U.S.C. § 1447(b).

22.

Defendants are entitled to and request a trial by jury on all issues.

WHEREFORE, notice is hereby given that this action is removed from the Thirty-Fifth Judicial District Court for the Parish of Grant to the United States District Court for the Western District of Louisiana, Alexandria Division.

Dated this 24th day of January, 2022.

Respectfully submitted,

FAIRCLOTH MELTON SOBEL & BASH, LLC

By: /s/ Barbara Bell Melton

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**ATTORNEYS FOR DEFENDANTS, BRIAN
SPARKS AND NELSON CREEK OUTDOORS, LLC**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

OLD INDIAN TRICKS, LLC

CIVIL ACTION NO.:

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DISTRICT JUDGE

BRIAN SPARKS, *et al*

MAGISTRATE JUDGE

JURY TRIAL DEMANDED

CERTIFICATION OF COMPLIANCE WITH 28 U.S.C. § 1446(d)

I hereby certify that a copy of the foregoing Notice of Removal has been placed in the United States Mail, with proper and sufficient postage affixed, addressed to:

Dan DeWitt
Through his attorney of record:
Ryan M. Goudelocke
Caraway LeBlanc
3936 Bienville Street
New Orleans, Louisiana 70119

I hereby further certify that a copy of the foregoing Notice of Removal has also been placed in the United States Mail, with proper and sufficient postage affixed, addressed to:

Clerk of Court
Parish of Grant
35th Judicial District
P.O. Box 263
Colfax, LA 71417

for filing in the record in the state court action entitled: "*Old Indian Tricks, LLC vs. Brian Sparks, et al,*" bearing docket number 27458, on the docket of the 35th Judicial District Court for the Parish of Grant, State of Louisiana.

Dated this 24th day of January, 2022.

Respectfully submitted,

FAIRCLOTH MELTON SOBEL & BASH, LLC

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